

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000443

FILED: _____

STATE OF ARIZONA

ROGER KEVIN HAYS

v.

JOHN DOUGLAS WAITE

JEREMY PHILLIPS

MESA CITY COURT
REMAND DESK CR-CCC
FINANCIAL SERVICES-CCC

MINUTE ENTRY

MESA CITY COURT

Cit. No. 748619

Charge: 1. DUI
2. BAC .10 OR GREATER WITHIN 2 HOURS OF DRIVING

DOB: 02/26/53

DOC: 11/18/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000443

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial court and the memoranda submitted by counsel.

The Appellant claims that a phlebotomist was not qualified to perform a blood draw in this case because the phlebotomist has moved out of state and the only evidence of his qualifications as a phlebotomist consists of his resume. However, both parties stipulated to the admission of this resume which lists the qualifications of the phlebotomist to perform blood draws.

Appellant attempts to distinguish the facts of this case from those in State of Arizona ex rel. Pennartz v. Olcavage¹. Appellant claims that the trial judge erred in denying his Motion to Suppress the results of the blood draw.

First, this Court notes that A.R.S. Section 32-1456(A) is a regulatory statute governing medical assistants. That statute has no applicability to a forensic blood draw in a criminal case.²

Evidence was presented to the trial judge that a qualified individual performed the blood draw in this case on the basis of the resume of the phlebotomist. It is important to note that there is no question but that the blood draw was performed properly by someone who knew what (s)he was doing, who had experience, and that no physical harm was caused to the Appellant during the blood draw. The only issue is whether the phlebotomist was qualified. The trial judge found that the phlebotomist was a qualified individual within the meaning of applicable law.³

Most importantly, A.R.S. Section 28-1388(A) provides in the second sentence of the section:

¹ 200 Ariz. 582, 30 P.3d 649 (App. 2001).

² Id.

³ A.R.S. Section 28-1388(A); State v. Nihiser, 191 Ariz. 199, 953 P.2d 1252 (App. 1997).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000443

The qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood-alcohol content determination made pursuant to this subsection.

Appellant seems to have ignored the second sentence of this statute as quoted above. Clearly, our legislature has provided that the qualifications of the individual or phlebotomist withdrawing the blood are not foundational prerequisites for the admissibility of the alcohol content of the blood. There is no statutory or constitutional right to have a medical assistant or phlebotomist supervised by a physician perform a blood draw under either Arizona law or Federal law.

Appellant's complaints regarding the phlebotomist are, therefore, without merit. Appellant and Appellee stipulated to the resume of the phlebotomist from which the trial judge could have properly concluded that the phlebotomist was qualified.

IT IS THEREFORE ORDERED affirming the judgments of guilt and sentences imposed by the lower court.

IT IS FURTHER ORDERED remanding this case back to the Mesa City Court for all future proceedings.